IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7540 OF 2005

Shantsagar Hotels Pvt.Ltd. Petitioner
Pune

versus

The Assistant Registrar
(on deputation) Pune & others Respondents

Shri Sanjay Kshirsagar for petitioner.

Shri P.S.Dani for respondent no.1.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 17th February 2006

PC :

1. Heard Shri Kshirsagar for the petitioner and Shri Dani for respondent no.1 bank.

2. The petitioner is aggrieved by the action of first respondent bank in firstly obtaining a Recovery Certificate on 17th May 2003 and thereafter initiating proceedings in execution of the same and resorting to the provisions of Securitisation Act. In his submission, during the proceedings before appellate authority under

the Securitisation Act there was a compromise and the bank had agreed to accept the amount in full and final settlement. However, that settlement failed through and now the bank is resorting to coercive measure to recover the amount under the recovery certificate.

3. Shri Kshirsagar submits that the recovery certificate dated 17th May 2003 was challenged by filing revision application before the Divisional Joint Registrar, being Revision Application No.359 of 2003. However, in the light of the subsequent developments and an amount of Rs.75.00 lakh having been paid, it was expected that the bank would drop all coercive measures. Therefore, compliance with Section 154(2A) of Maharashtra Co-operative Societies Act, 1960 need not made. The revision application was disposed of on 29th December 2004 only on this ground.

4. Now the bank is again initiating the coercive measures. The recovery certificate would be executed and that is why a demand notice is issued by the Special Recovery Officer. He has threatened that the entire amount be paid within a period of 15 days from the date of issuance of recovery notice. Thereafter the attachment of

the properties has been levied and during the subsistence of such attachment now the apprehension is that the properties would be put up for sale.

5. Shri Kshirsagar states that an opportunity be given to the petitioner to make good it's case on merits. Moreso, when a substantial sum of Rs.75.00 lakh is paid and he is willing to make good the deficit, if any, to the extent of 50% of the amount under recovery certificate. Shri Kshirsagar has, upon taking instructions from the petitioner today, handed in a cheque of Rs.15.00 lakh which is drawn on ABN Amro Bank in favour of first respondent bank.

6. Shri Dani for first respondent has, upon instructions, made a statement that in case the petitioner deposits 50% of the dues as on the date of filing of the revision application with first respondent bank, the first respondent bank would not initiate coercive measures to recover the amount in question. Thereupon, the revision application would be contested by both sides on merits.

7. According to Shri Dani the deficit is

Rs.40.00 lakh and thus in addition to the sum of Rs.75.00 lakh already paid, the petitioner would be required to deposit a further sum of Rs.40.00 lakh.

8. Shri Kshirsagar has sought time to pay the amount of Rs.40.00 lakh. However, he says that the cheque of Rs.15.00 lakh handed in today be encashed by the first respondent bank and the balance sum of Rs.25.00 lakh would be paid within a period of four months from today.

9. In case the above amount of Rs.25.00 lakh is paid as undertaken within a period of four months from today and proof of said deposit is produced before the Divisional Joint Registrar, then the Divisional Joint Registrar to revive the Revision Application No.359 of 2003 for hearing on merits and dispose of the same as expeditiously as possible after hearing both sides. Needless to state that the amount of Rs.25.00 lakh if not paid as undertaken within the period aforesaid, the writ petition as well as revision application would stand dismissed and thereafter it would be open for the first respondent bank to proceed and recover all sums that are due and payable in accordance with law. Needless to state that the

above amount of Rs.75.00 lakh already paid as well as amount of Rs.40.00 lakh which would now be paid, be adjusted towards total dues, and deposit as well as acceptance is without prejudice to the rights and contentions of both sides. Further needless to state that for a period of four months from today first respondent bank shall not initiate any coercive measures but the attachment order passed by the Special Recovery Officer shall continue for a period of four months. Petition disposed of.

(S.C.DHARMADHIKARI, J.)